



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

keep for two years physicians' prescriptions for the drug? It seems that these provisions are not means to effectuate the object of the act in respect to revenue, but are police regulations not even incidental to the revenue end of the act, and tending only to protect against the misuse of the drugs. This being true, the provisions do not take on a constitutional gloss by reason of being appended to a revenue measure. The federal government under cloak of the granted power to tax cannot overstep the aim and spirit of that grant.

---

MARRIAGE BY MAIL. — Some of the problems of the American girl and her soldier fiancé on military duty abroad might be solved if a status of marriage could be created while the soldier is still on foreign soil.<sup>1</sup> Professor Lorenzen in a recent article<sup>2</sup> has considered whether this could be accomplished by means of marriage by proxy. It would be much simpler if it were possible to attain the result by direct communication by mail between the parties.<sup>3</sup> Whether this can be done involves the following questions: (1) whether or not a marriage is valid which consists merely of an exchange of promises without formal solemnization; (2) whether or not cohabitation in addition to the mutual promises is a necessary element of such an informal marriage; (3) whether or not it is essential that the promises be exchanged by the parties in the presence of each other; (4) and what law governs the effect of an exchange of promises of marriage when the parties are in different jurisdictions during the transaction.

1. Apart from statute, most courts in this country recognize as valid a marriage based on mutual consent without formal solemnization or the interposition of officials, civil or religious.<sup>4</sup> Although there are

---

<sup>1</sup> Such a marriage might be desired, not only for sentimental reasons, but also in some cases in order to legitimize children; in others, for such practical purposes as naming the woman as beneficiary with respect to government War Risk Insurance.

<sup>2</sup> "Marriage by Proxy and the Conflict of Laws," 32 HARV. L. REV. 473.

<sup>3</sup> An opinion was recently rendered by the Judge Advocate General to the effect that American soldiers abroad might marry women in the United States by interchanging a marriage contract by mail, provided that such marriage does not contravene any statute of the state in question.

This opinion is, of course, not controlling on the courts. *Deming v. McClaughry*, 113 Fed. 639 (1902). But it "should receive the careful consideration of the courts, and in doubtful cases . . . should be permitted to lead the way to their decisions." *Deming v. McClaughry*, *supra*. However, the opinion is not valuable, since it begs the question, whether such a marriage is contrary to the law of the various states.

<sup>4</sup> *Davis v. Pryor*, 112 Fed. 274 (1901); *Adger v. Ackerman*, 115 Fed. 124 (1902); *Campbell v. Gullatt*, 43 Ala. 57 (1869); *Graham v. Bennett*, 2 Cal. 503 (1852); *Caras v. Hendrix*, 62 Fla. 446, 57 So. 345 (1911); *Wynne v. State*, 17 Ga. App. 263, 86 S. E. 823 (1915); *Hutchinson v. Hutchinson*, 196 Ill. 432, 63 N. E. 1023 (1902); *Smith v. Fuller*, 108 N. W. (Iowa) 765 (1906); *Shorten v. Judd*, 60 Kan. 73, 55 Pac. 286 (1898); *Dumaresly v. Fishly*, 3 A. K. Marsh (Ky.) 368 (1820); *Hutchins v. Kimmell*, 31 Mich. 126 (1875); *State v. Worthingham*, 23 Minn. 528 (1877); *Howard v. Kelly*, 111 Miss. 285, 71 So. 391 (1916); *Gibson v. Gibson*, 24 Neb. 394, 39 N. W. 450 (1888); *Parker v. De Bernardi*, 40 Nev. 361, 164 Pac. 645 (1917); *State v. Thompson*, 76 N. J. L. 197, 68 Atl. 1068 (1908); *Fenton v. Reed*, 4 Johns. (N. Y.) 52 (1809); *Cheney v. Arnold*, 15 N. Y. 345 (1857); *Carmichael v. State*, 12 Ohio St. 553 (1861); *In re Love's Estate*, 42 Okla. 478, 142 Pac. 305 (1914); *Richard v. Brehm*, 73 Pa. St. 140 (1873); *Fryer v. Fryer*, Rich. Eq. Cas. (S. C.) 85 (1832); *Grigsby v. Reib*, 105 Texas, 597, 153 S. W.

statutes in most, if not all, jurisdictions, prescribing formalities for the solemnization of marriages, these statutes do not have the effect of nullifying otherwise valid informal marriages, unless the statute expressly so provides.<sup>5</sup> Consequently, in most states, common-law<sup>6</sup> marriages are still valid.<sup>7</sup>

2. On principle and by the better view of the authorities,<sup>8</sup> if the parties exchange promises, whether written or oral,<sup>9</sup> to presently<sup>10</sup> assume the

1124 (1913); *Hilton v. Roylance*, 25 Utah, 129, 69 Pac. 660 (1902); *Becker v. Becker*, 153 Wis. 226, 140 N. W. 1082 (1913).

*Contra*: *Furth v. Furth*, 97 Ark. 272, 133 S. W. 1037 (1911); *Johnson's Heirs v. Raphael*, 117 La. 967, 42 So. 470 (1906); *Denison v. Denison*, 35 Md. 361 (1871); *Milford v. Worcester*, 7 Mass. 48 (1810); *Dunbarton v. Franklin*, 19 N. H. 257 (1848); *Morrill v. Palmer*, 68 Vt. 1, 33 Atl. 829 (1895). Cf. *State v. Samuel*, 19 N. C. (2 Dev. & Bat. Law) 177 (1836).

<sup>5</sup> *Mathewson v. Phoenix Iron Foundry*, 20 Fed. 281 (1884); *Meister v. Moore*, 96 U. S. 76 (1877); *Travers v. Reinhardt*, 205 U. S. 423 (1907); *Tartt v. Negus*, 127 Ala. 301, 28 So. 713 (1900); *Taylor v. Taylor*, 10 Colo. App. 303, 50 Pac. 1049 (1897); *Warren v. Warren*, 66 Fla. 138, 63 So. 726 (1913); *Askew v. Dupree*, 30 Ga. 173 (1860); *Meehan v. Edward Valve, etc. Co.*, 117 N. E. (Ind. App.) 265 (1917); *Renfrow v. Renfrow*, 60 Kan. 277, 56 Pac. 534 (1899); *Hutchins v. Kimmel*, *supra*; *State v. Worthingham*, *supra*; *Dyer v. Brannock*, 66 Mo. 391 (1877); *University of Michigan v. McGuckin*, 62 Neb. 489, 87 N. W. 180 (1901); *State v. Zichfeld*, 23 Nev. 304, 46 Pac. 802 (1896); *Ziegler v. P. Cassidy's Sons*, 220 N. Y. 98, 115 N. E. 471 (1917); *Umbenhower v. Labus*, 85 Ohio St. 238, 97 N. E. 832 (1912); *In re Love's Estate*, *supra*; *Richard v. Brehm*, *supra*; *Ingersol v. McWillie*, 9 Texas Civ. App. 543, 30 S. W. 56 (1895); *Becker v. Becker*, *supra*. See, also, *Rutledge v. Tunno*, 69 S. C. 400, 404, 48 S. E. 297, 298 (1904); *Svendsen v. Svendsen*, 37 S. D. 353, 362, 158 N. W. 410, 412 (1916). 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 423, 424.

But, the statutes were held to invalidate common-law marriages in: *Robinson v. Redd's Adm'r*, 19 Ky. Law Rep. 422, 43 S. W. 435 (1897); *Grisham v. State*, 2 Yerg. (Tenn.) 589 (1831); *Offield v. Davis*, 100 Va. 250, 40 S. E. 910 (1902); *In re McLaughlin's Estate*, 4 Wash. 570, 30 Pac. 651 (1892); *Beverlin v. Beverlin*, 29 W. Va. 732, 3 S. E. 36 (1887). See 1917, ILL. REV. STAT., c. 89, § 4; 1907 UTAH, COMP. LAWS, § 1184.

In California and in South Dakota, although marriages may still be valid without formal solemnization, there must be, as a substitute for the latter, a "mutual assumption of marital rights, duties and obligations." *Sharon v. Sharon*, 79 Cal. 633, 22 Pac. 26 (1889); *Svendsen v. Svendsen*, 37 S. D. 353, 158 N. W. 410 (1916).

<sup>6</sup> Informal marriages are generally termed "common-law" marriages, and the terms are here used as interchangeable, although there is, perhaps, some doubt as to whether marriages were ever wholly valid at common law without formal solemnization. The historically more accurate view is that the earlier English common law recognized informal marriages. *Dalrymple v. Dalrymple*, 2 Hagg. Con. 54 (1811). See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 405. But it was declared by a comparatively recent decision of the House of Lords that informal marriages were never valid in England. *Reg. v. Millis*, 10 Cl. & Fin. 534 (1844). This decision was, of course, too recent to be an authority for the courts of this country. The marriage acts in England now make informal marriages void. 26 GEO. II, c. 33; 6 and 7 WM. IV, c. 85. Informal marriages are valid in Scotland. *Dalrymple v. Dalrymple*, *supra*. *The Breadalbane Case*, L. R. 1 H. L. Sc. 182 (1867).

<sup>7</sup> See L. R. A. 1915 E, 19, 20, for a list of these states.

<sup>8</sup> *Dumaresly v. Fishly*, *supra*; *In re Hulett's Estate*, 66 Minn. 327, 69 N. W. 31 (1896); *Davis v. Stouffer*, 132 Mo. App. 555, 112 S. W. 282 (1908); *Jackson v. Winne*, 7 Wend. (N. Y.) 47 (1831).

<sup>9</sup> The promises may be oral. *Bissell v. Bissell*, 55 Barb. (N. Y.) 325 (1869). Indeed, they may be wholly inferred from the conduct of the parties. See cases cited in note 14, *infra*.

<sup>10</sup> The promises in an informal marriage must be *per verba de praesenti*. *Robertson v. State*, 42 Ala. 509 (1868); *Hebblethwaite v. Hepworth*, 98 Ill. 126 (1881); *Cheney v. Arnold*, *supra*; *Duncan v. Duncan*, 10 Ohio St. 181 (1859); *Fryer v. Fryer*, *supra*.

status of husband and wife,<sup>11</sup> this agreement without more creates a valid marriage.<sup>12</sup> But there are cases squarely holding that cohabitation is also essential.<sup>13</sup> However unfortunate these latter decisions,<sup>14</sup> they will probably be followed in the states in which they were rendered, and must be given appropriate consideration in connection with our main problem.

3. Personal presence of the parties at the time the agreement is made has been stated to be one of the requisites of a valid consensual marriage.<sup>15</sup> But marriages by proxy were possible in England when informal marriages were there recognized,<sup>16</sup> so that this requirement of

Where promises *per verba de futuro cum copula* are allowed to constitute a marriage, it is only because present promises are inferred at the time of the later copulation. *In re McCausland's Estate*, 52 Cal. 568 (1878); *Peck v. Peck*, 12 R. I. 485 (1880); *Stoltz v. Doering*, 112 Ill. 234 (1885).

<sup>11</sup> The mutual promises must be consistent with the recognized essentials of the marriage relation. *State v. Walker*, 36 Kan. 297, 13 Pac. 279 (1887). Thus, simply promising to live together is not enough. *Soper v. Halsey*, 85 Hun. (N. Y.) 464, 33 N. Y. Supp. 105 (1895). It must be intended that the relation be permanent. *Peck v. Peck*, 155 Mass. 479, 30 N. E. 74 (1892); *State v. Ta-cha-na-tah*, 64 N. C. 614 (1870). *Contra*: *Johnson v. Johnson's Adm'r*, 30 Mo. 72 (1860). Also, that it be mutually exclusive of marriage relations with others. *Riddle v. Riddle*, 26 Utah 268, 72 Pac. 1081 (1903). See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 301, 317.

<sup>12</sup> Of course an informal marriage may be invalid for any substantive reason, such as incapacity of the parties, and the like, which would make a regularly solemnized marriage invalid.

<sup>13</sup> *Hawkins v. Hawkins*, 142 Ala. 571, 38 So. 640 (1904); *Herd v. Herd*, 194 Ala. 613, 69 So. 885 (1915); *Grigsby v. Reib*, *supra*. See also *Lorimer v. Lorimer*, 124 Mich. 631, 635, 83 N. W. 609, 610 (1900). As to a statutory rule in California and South Dakota, see note 5, *supra*.

In *Davis v. Stouffer*, *supra*, it is said, "There are cases in which the statement is made that a contract *in praesenti* followed by cohabitation, or by intercourse, is a valid common-law marriage; but the latter clause of that statement was merely addressed to the facts which appeared in the particular case. It was not meant that the marriage would not be complete without that fact." Illustrating this statement, see: *Davis v. Pryor*, *supra*, 276; *Heymann v. Heymann*, 218 Ill. 636, 640, 75 N. E. 1079, 1080 (1905); *Shorten v. Judd*, 60 Kan. 73, 77, 55 Pac. 286, 287 (1898); *Floyd v. Calvert*, 53 Miss. 37, 44 (1876).

<sup>14</sup> Cohabitation may be a very important circumstance from which to infer mutual present promises to assume the marriage relation. *Haywood v. Nichols*, 99 Kan. 138, 160 Pac. 982 (1916); *Bey v. Bey*, 83 N. J. Eq. 239, 90 Atl. 684 (1914); *Rose v. Clark*, 8 Paige (N. Y.) 574 (1841). The *Breadalbane Case*, *supra*. It is possible to have a valid common-law marriage based on promises wholly so inferred. *Adger v. Ackerman*, *supra*; *Estes v. Merrill*, 121 Ark. 361, 181 S. W. 136 (1915); *Land v. Land*, 206 Ill. 288, 68 N. E. 1109 (1903). But cohabitation of itself does not constitute marriage; "*consensus, non concubitus, facit matrimonium*." *In re Boyington's Estate*, 157 Iowa, 467, 137 N. W. 949 (1912); *Marks v. Marks*, 108 Ill. App. 371 (1903); *Schwingle v. Keifer*, 135 S. W. (Tex. Civ. App.) 194 (1911). In fact, as is pointed out in *Davis v. Stouffer*, *supra*, and in *In re Hulett's Estate*, *supra*, except as evidence of mutual promises, cohabitation should be considered wholly immaterial. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 315, 27 HARV. L. REV. 378.

<sup>15</sup> "It was . . . not . . . disputed that marriage can only be contracted in Scotland by the mutual agreement of both parties to become husband and wife. There is, however, no particular form or ceremony by which such agreement must be manifested except, indeed, that the parties must, in order to constitute a marriage *de praesenti*, be in the presence of each other when the agreement is entered into, and it must be an agreement to become husband and wife immediately from the time when mutual consent is given." Lord Cranworth, in the *Breadalbane Case*, *supra*, 199.

<sup>16</sup> See E. G. Lorenzen, *supra*, 480, 481.

personal presence, if it existed, was confined within very narrow limits. Swinburne has expressly declared that a valid marriage might be contracted by mail.<sup>17</sup> The opposing view seems to rest on the reasoning that, in a marriage contract, the consents must be given at the same instant, apparently an impossibility where the agreement is entered into by mail.<sup>18</sup> But the theory of the law of contracts, — that an offer sent by mail continues to be made during every moment of its travel, so that when accepted, the offer and acceptance are contemporaneous,<sup>19</sup> — seems as applicable to contracts creating the marriage status as to ordinary contracts.<sup>20</sup> It is true that the marriage status is of such vital importance that its creation should be closely guarded.<sup>21</sup> But, on the other hand, the public policy favoring the legitimation of children and lawful, in preference to illicit, relations militates against the requirement of formalities of any sort.<sup>22</sup> The fact that the promises must be *per verba de praesenti* furnishes a substantial safeguard against the possibility of contracting marriage "accidentally." Therefore, where the parties during the exchange of promises are in the same jurisdiction, assuming that it is one where informal marriages are valid, it is safe to assert that a valid marriage may be contracted by mail.<sup>23</sup>

4. But where the parties are in different jurisdictions during the exchange of promises, there arises the further question of what law determines the effect of the transaction. This was the situation in *Great*

<sup>17</sup> SWINBURNE, SPOUSALS, 2 ed., 162, 181-83. Bishop accepts Swinburne's statement as the correct common-law doctrine. 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 325.

<sup>18</sup> See *Campbell v. Sassen*, 2 Wils. & S. 309, 317-319 (1826); 1 FRASER, DOMESTIC RELATIONS, 155, 156.

<sup>19</sup> "The defendants must be considered in law as making, during every instant of the time their letter was travelling, the same identical offer to the plaintiffs and then the contract is completed by the acceptance of it by the latter." *Adams v. Lindsell*, 1 B. & Ald. 681, 683 (1818).

<sup>20</sup> The argument that the offeror of marriage may change his mind between the time of mailing the offer and the time of its acceptance, with the serious consequence that, if the offer was accepted, a marriage would be created which was not based on real mutual consent, is not of much consequence practically, since it would be a rare case indeed where so rapid a change of heart took place as to so momentous a decision. Also, the decision is, in the first place, more likely to be a well-deliberated one when arrived at away from the presence of the enchantress. Moreover, an analogous argument applies with equal force to marriages by proxy, should the party desire to revoke the proxy's authority. See E. G. Lorenzen, *supra*, 482, 483.

<sup>21</sup> Willing assent is given to a proposition that the transactions on which a claim of a common-law marriage is based should be subjected to the careful scrutiny of the courts, especially after the death of one of the parties. See *Bishop v. Brittain Investment Co.*, 229 Mo. 699, 724; 129 S. W. 668, 675 (1910). And it would seem that this is a sufficient protection against any possible danger of promoting blackmail or perjury that might arise out of the practice of allowing letters to be held to constitute a binding marriage.

<sup>22</sup> See *In re Sanders' Estate*, 168 Pac. (Okla.) 197, 198 (1917); *Houston Oil Co. of Texas v. Griggs*, 181 S. W. (Tex. Civ. App.) 833, 836 (1915); 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 77.

<sup>23</sup> A search of the American authorities has failed to reveal any case in which the validity of a marriage by mail has been under consideration, with the exception of the recent case discussed in the text, *infra*. There is, however, a case decided under the Scotch law, in which a valid marriage was based primarily on a letter, addressed to the woman, but delivered to a third party, although there was no direct evidence that the woman knew of the letter's contents before the man's death. *Hamilton v. Hamilton*, 9 Cl. & Fin. 327 (1842).

*Northern Ry. Co. v. Johnson*,<sup>24</sup> a recent case in the Circuit Court of Appeals. In this case, an exchange of promises *de praesenti* by mail between a man residing in Minnesota and a woman residing in Missouri was held to constitute a valid marriage. Both Minnesota<sup>25</sup> and Missouri<sup>26</sup> allow common-law marriages, however, so that the decision of the question of what law governed the formal validity was not necessary to the result. The principle of the conflict of laws is unquestioned, that, at least as to formal validity, the law of the place of celebration controls.<sup>27</sup> The difficulty here is to determine which jurisdiction is the place of celebration. As to an ordinary contract, the settled rule, whatever its theoretical difficulties,<sup>28</sup> is that the *locus contractus* is the place where the acceptance is mailed.<sup>29</sup> A marriage, it is true, is not merely a contract; it is the creation of a status.<sup>30</sup> However, there seems to be no good reason for the application of a different rule.<sup>31</sup> The court in the principal case proceeded on this reasoning<sup>32</sup> since it was held that the marriage was governed by the laws of Missouri, where the acceptance was mailed. Consequently, it would presumably have upheld the marriage, even if informal marriages were not recognized in Minnesota. Although there is no direct authority precluding this result, some doubt has been expressed as to its correctness, apparently based on the idea that a state or country cannot impose a status on a person who is neither domiciled nor present within its territorial limits.<sup>33</sup> Even admitting this premise,

<sup>24</sup> 254 Fed. 683 (Cir. Ct. App.).

<sup>25</sup> *State v. Worthingham*, *supra*; *In re Hulett's Estate*, *supra*; *Shattuck v. Shattuck*, 118 Minn. 60, 136 N. W. 409 (1912).

<sup>26</sup> *Dyer v. Brannock*, *supra*; *State v. Bittick*, 103 Mo. 183, 15 S. W. 325 (1891); *Nelson v. Jones*, 245 Mo. 579, 151 S. W. 80 (1912).

<sup>27</sup> *Kent v. Burgess*, 11 Sim. 361 (1840); *Brinkley v. Attorney-General*, 15 P. D. 76 (1890); *Meister v. Moore*, *supra*; *Lando v. Lando*, 112 Minn. 257, 127 N. W. 1125 (1910); *Clark v. Clark*, 52 N. J. Eq. 650, 30 Atl. 81 (1894); *Nelson v. Carlson*, 48 Wash. 651, 94 Pac. 477 (1908). See STORY, CONFLICT OF LAWS, § 113; 25 HARV. L. REV. 374; 26 HARV. L. REV. 536.

<sup>28</sup> See WALD'S POLLOCK ON CONTRACTS (WILLISTON'S ed.), 37, 38.

<sup>29</sup> *Adams v. Lindsell*, *supra*; *Dunlop v. Higgins*, 1 H. L. C. 381 (1848); *Newcomb v. De Roos*, 2 E. & E. 271 (1859).

<sup>30</sup> See *Bishop v. Brittain Investment Co.*, 229 Mo. 699, 726; 129 S. W. 668, 676 (1910); *Hilton v. Roylance*, 25 Utah 129, 137, 69 Pac. 660, 663 (1902).

<sup>31</sup> "Marriage being a civil contract, the rules to be applied must be to a great extent the same as are applied to ordinary contracts." *Coad v. Coad*, 87 Neb. 290, 292; 127 N. W. 455, 457 (1910).

The rule of ordinary contracts, if applied to contracts of marriage, would carry with it, as a necessary consequence the result that, if the acceptance was never received at all, there would be a binding marriage, nevertheless. *Household Fire Ins. Co. v. Grant*, 4 Exch. Div. 216 (1879). The practical dangers of this result do not seem to justify the adoption of a special rule for marriage contracts; *viz.*, that the marriage is made where the acceptance is received. But even if such a rule were adopted, it would not change any of the conclusions reached herein, except as indicated in note 34, *infra*.

<sup>32</sup> Missouri has a statute expressly declaring marriage to be a civil contract. 1909, REV. STAT., c. 76, § 8279. But this simply means that marriage is made independent of religion; it does not dispense with any of the ordinary requisites of an informal marriage. See cases cited in note 26, *supra*. Moreover, even if this statute put marriages in Missouri on exactly the same basis as commercial contracts, it could not have the effect of appropriating to Missouri a jurisdiction which Missouri would not otherwise have had. Consequently, the decision in *Great Northern Ry. Co. v. Johnson*, *supra*, does not depend on any peculiarity of the law of Missouri.

<sup>33</sup> See *In re Lum Lin*, 59 Fed. 682, 683; 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 326.

it does not follow that the absentee may not *voluntarily* assume such a status. *Great Northern Ry. Co. v. Johnson* seems sound, and there is no sufficient basis for doubt that it will be followed in a case where informal marriages are not valid in the jurisdiction where the proposer is present.<sup>34</sup>

Applying the foregoing to our case of the American soldier abroad,<sup>35</sup> he should be able to enter into a valid marriage by mail, if the proposed wife to whom he addresses his offer of marriage accepts it in a state—whether her domicile or not<sup>36</sup> which recognizes common-law marriages, and which does not require cohabitation as an essential element of the informal marriage.

## RECENT CASES

ADMIRALTY — JURISDICTION — TEST OF JURISDICTION OVER CONTRACTS. — The plaintiff ship building company, in pursuance of an agreement made with the owners of the steamship *Yucatan*, towed the vessel to its shipyard, and, having hauled her out on land, repaired her. For a claim under the contract the plaintiff instituted a libel *in personam*. The defendant filed a motion to dismiss the cause for want of jurisdiction in admiralty. *Held*, that admiralty has jurisdiction. *North Pacific Steamship Co. v. Hall Bros. Marine Ry. & Ship-building Co.*, U. S. Supreme Court, October Term, 1918, No. 53.

In the fourteenth century the jurisdiction of admiralty, which until that time had been extended to all cases partaking of a maritime flavor, was greatly curtailed by successive enactments. GODOLPHIN, A VIEW OF ADMIRALTY JURISDICTION, c. 12. See *De Lovis v. Boit*, 2 Gall. (C. C.) 308, 418. Thereafter the court could not take cognizance of a contract made on land, even if to be performed at sea. *Susano v. Turner*, Noy, 67; *Craddock's Case*, 2 Brownl. & Gold. 39. Nor if made at sea to be performed on land. *Bridgeman's Case*, Hobart 11. These restrictions upon admiralty jurisdiction were rejected in the United States from an early date. *The Lottawanna*, 21 Wall. (U. S.) 558; *Waring v. Clarke*, 5 How. (U. S.) 441. The civil jurisdiction was made to depend, not as in matters of tort upon locality, but upon the subject matter of the contract, which must be essentially concerned with maritime services, transactions, or casualties. *New England Marine Ins. Co. v. Dunham*, 11 Wall. (U. S.) 1. See BENEDICT, AMERICAN ADMIRALTY, § 256. Contracts for the building of vessels, not being maritime contracts, are not within the scope of admiralty. *The Winnebago*, 205 U. S. 354; *Roach v. Chapman*, 22 How. (U. S.) 129. But contracts for the repair of vessels, being maritime, are subject to maritime jurisdiction. *The J. E. Rumbell*, 148 U. S. 1; *Peyroux v. Howard*, 7 Pet. (U. S.) 324. The element necessary to the distinction is not the *locus* of the work, but its reference to a vessel engaged in navigation and commerce. *Tucker v. Alexan-*

<sup>34</sup> If it were thought preferable to adopt the rule that the place of celebration was the place where the acceptance was received, there would be no valid marriage, unless informal marriages were good in the jurisdiction where the proposer was present. But, then, the law of the acceptor's jurisdiction would be immaterial. Therefore, if either jurisdiction permitted informal marriages, that could be made sufficient in any given case, since the rôle of the respective parties could be interchanged accordingly.

<sup>35</sup> The conclusions reached are based on the least favorable assumption as to the law of the jurisdiction in which the soldier is present; *viz.*, that informal marriages are not there valid.

<sup>36</sup> It would be sufficient if the woman was present within this jurisdiction only long enough to accept the offer. *Cf. Lorenzen, supra*, 487, 488.